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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-191101

DATE: January 31, 1978

MATTER OF: Just-Tran Construction, Inc.

DIGEST:

Request for review of Federal grantee's rejection of bid for alleged noncompliance with subcontractor 10 percent minority business enterprise requirement mandated by Public Works Employment Act of 1977, which requirement is subject of conflicting U.S. District Court opinions and other pending litigation, will not be considered in view of such litigation.

Just-Tran Construction, Inc. (Just-Tran) requests review of the rejection of its bid to provide new toilet facilities for the handicapped at the Bronx County Building by the New York Department of Public Works, New York, New York. The procurement is funded by a grant from the Department of Commerce, Economic Development Administration.

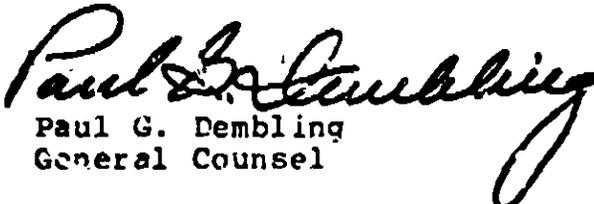
Bidders were required to subcontract 10 percent of the contracted work to a minority business enterprise (MBE). Just-Tran states that its bid was verbally rejected because it failed to provide the name of its proposed minority subcontractor, notwithstanding that it certified in the bid that it would utilize a minority subcontractor. Just-Tran contends that it is the lowest bidder and therefore should be awarded the contract.

The MBE provision, mandated by section 106(f)(2) of the Local Public Works Capital Development and Investment Act of 1976, amended by the Public Works Employment Act of 1977, Pub. L. 95-28, has been the subject of conflicting United States District Court opinions. See Associated General Contractors of California v. Secretary of Commerce, U.S. District Court for the Central District of California, Civil

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Action No. 77-3738-AAH, October 31, 1977, and Constructors Association of Western Pennsylvania v. Kreps, U.S. District Court for the Western District of Pennsylvania, Civil Action No. 77-1035, October 13, 1977. The California decision has been appealed to the United States Supreme Court.

This Office generally will not rule on a matter that is the subject of litigation before a court of competent jurisdiction. Nartron Corporation and DC Electronics, Incorporated, 53 Comp. Gen. 730 (1974), 74-1 CPD 154. We have therefore taken the position that it would be inappropriate for this Office to take any action on complaints regarding the MBE requirement until the litigation is finally resolved. Jack E. Kessner Construction; Lee C. Nelson, Inc., B-190828, December 23, 1977, 77-2 CPD 503; Campanella Corporation, B-190601, December 27, 1977, 77-2 CPD 507. Accordingly, the complaint is dismissed.


Paul G. Dembling
General Counsel